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From: **John C. Pokotylo, Esq.**

Date: **December 18, 2007**

Number of Pages Including Cover: **14**

MESSAGE: **FORMAL SUBMISSION OF:**
1) Transmittal (1 pg.);
2) Fee transmittal (1 pg.) (in duplicate); and
3) Reply Brief (10 pgs.).

Attorney Docket No.: **Google-115 (GP-089-03-US)**
Appl. No.: **10/676,195**
Applicants: **Andrew FIKES, et al.**
Filed: **September 30, 2003**
Title: **SYSTEM AND METHOD FOR AUTOMATICALLY TARGETING WEB-BASED ADVERTISEMENTS**
TC/A.U.: **1751**
Examiner: **Tri V. Nguyen**

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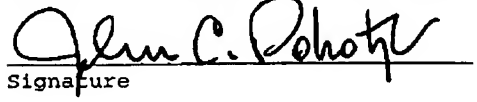

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(to be used for all correspondence after initial filing)

Application Number	10/676,195
Filing Date	September 30, 2003
First Named Inventor	Andrew FIKES
Group Art Unit	1751
Examiner Name	Tri V. Nguyen
Total Number of Pages in This Submission	
Attorney Docket Number	Google-115 (GP-089-03-US)

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- ☒ Fee Transmittal Form
  - ☐ Fee Attached
- ☐ Amendment / Reply
  - ☐ After Final
  - ☐ Affidavits/declaration(s)
- ☐ Extension of Time Request
- ☐ Express Abandonment Request
- ☐ Information Disclosure Statement
- ☐ Certified Copy of Priority Document(s)
- ☐ Response to Missing Parts/ Incomplete Application
  - ☐ Response to Missing Parts under 37 CFR 1.52 or 1.53
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Firm or Individual name	John C. Pokotylo (Reg. No. 36,242)
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FEE TRANSMITTAL for FY 2007

Effective 09/30/2007. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT ($) 0.00

Complete if Known	
Application Number	10/676,195
Filing Date	September 30, 2003
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1201	210	2201	105	Independent claims in excess of 3
1203	370	2203	185	Multiple dependent claim, if not paid
1204	210	2204	105	**Reissue independent claims over original patent
1205	50	2205	25	**Reissue claims in excess of 20 and over original patent

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1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for ex parte reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	120	2251	60	Extension for reply within first month	
1252	460	2252	230	Extension for reply within second month	
1253	1,050	2253	525	Extension for reply within third month	
1254	1,640	2254	820	Extension for reply within fourth month	
1255	2,230	2255	1,115	Extension for reply within fifth month	
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1403	1,030	2403	515	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	510	2452	255	Petition to revive - unavoidable	
1453	1,540	2453	770	Petition to revive - unintentional	
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1806	180	1806	180	Submission of Information Disclosure Stmt	
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1809	810	2809	405	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	810	2810	405	For each additional invention to be examined (37 CFR 1.129(b))	
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Name (Print/Type)	John C. Pokotylo	*Registration No. (Attorney/Agent)*	36,242	*Telephone*	(732) 542-9070
Signature	John C. Pokotylo			*Date*	December 18, 2007

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Art Unit	1751
Attorney Docket No.	Google-115 (GP-089-03-US)

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FEE CALCULATION (continued)

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SUBMITTED BY

(Complete *if applicable*)

Name (Print/Type)	John C. Pokotylo	Registration No. (Attorney/Agent)	36,242	Telephone	(732) 542-9070
Signature	John C. Pokotylo			Date	December 18, 2007

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IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE

Attorney Docket No.: **Google-115 (GP-089-03-US)**

Appl. No.: **10/676,195**

Appellant: **Andrew FIKES, et al.**

Filed: **September 30, 2003**

Title: **SYSTEM AND METHOD FOR AUTOMATICALLY TARGETING WEB-BASED ADVERTISEMENTS**

TC/A.U.: **1751**

Examiner: **Tri V. Nguyen**

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S I R:

REPLY BRIEF

Further to the Examiner's Answer mailed on October 18, 2007 (referred to as "the Examiner's Answer" below), which defined a period for reply to expire on December 18, 2007, the Appellant respectfully requests that the Board consider this Reply Brief.

Argument

This Reply Brief incorporates by reference, the earlier filed Appeal Brief. Accordingly, the arguments presented in this Reply Brief are intended to ***supplement, not replace***, arguments presented in the earlier filed Appeal Brief. Further, since the arguments presented here are intended to supplement arguments in the Appeal Brief, the claims are to be grouped in accordance with the separate headings providing in the Appeal Brief and nothing in this Reply Brief shall constitute a waiver of any argument that the Board must consider the patentability of the separately grouped claims separately.

Regarding claims 2-5, 15-18 and 30, on pages 10 and 11 of the Examiner's Answer, the Examiner argues that (1) selection of an ad is not restricted to Boolean parameters, (2) Figure 5 and paragraphs [0038]-[0041] somehow teach a "summation mechanism" of elements 40, 45 and 47 which somehow determines a "cumulative" value, and (3) that the Appellant is improperly reading limitations from the specification into the claims. As discussed below, each of these arguments is either irrelevant, or flawed.

With regard to the Examiner's position that selection of an ad is not restricted to Boolean parameters, the Appellant agrees that the Radwin publication teaches a Boolean and non-Boolean way of selecting an ad. This is ***irrelevant*** however, ***since***

neither employs a degree of match between the query and the advertisement.

As detailed in the Appeal Brief, in the Radwin publication, immediate (also referred to as "keyword targeted") ads may be determined by matching one or more received search terms against keyword terms stored in an advertisement database (See, e.g., the search term index 24 of Figure 4 and the ad repository 20 of Figure 5.) to determine which advertisement will be presented as an immediate (i.e., keyword) advertisement. As detailed in the Appeal Brief, in determining the immediate (i.e., keyword) advertisement in the Radwin publication, matching is limited to those advertisements which are designated as keyword advertisements. (See, e.g., the keyword flags 45 that are "set" in Figure 5.) This technique does not employ a ***degree of match*** between the query and the advertisement.

In the case of time dependent ads, previous search terms are matched against non-keyword terms (i.e., not flagged as a keyword term) to determine a sub-set of ads eligible for presentation as a time-dependent advertisement. Then, a single time-dependent ad is selected from this sub-set of ads ***by determining which of the advertisements in the sub-set is optimal for presentation***. The selection process might (a) filter out ads that are not related to a previously stored search term (i.e., advertisements not associated with advertisement types related to certain terms), (b) maximize revenue, and/or (c) meet guaranteed minimum impression quotas. ***Although not strictly Boolean,*** this method ***does not employ a degree of match between the query and the advertisement.***

The Examiner's position that Figure 5 and paragraphs [0038]-[0041] of the Radwin publication somehow teach a "summation mechanism" of elements 40, 45 and 47 which somehow determines a cumulative score, is not supported. The Appellant has reviewed the Radwin publication, and cited paragraphs [0038]-[0041] in particular, to try to find the purported "summation mechanism" of elements 40, 45 and 47, the purported "Messer example," and the purported "Cumulative" value in the table on page 11 of the Examiner's Answer, and quite frankly finds no support for the Examiner's description of the operation of the Radwin publication. Although paragraph [0040] discusses ***adding*** a keyword flag and/or an advertisement importance weighting value, ***this concerns manual data entry by an editorial staff*** (that is, in the context of adding or entering data to a table), and does not teach summing keyword flags and importance weights as alleged by the Examiner to come up with a cumulative value. The Appellant's interpretation is consistent with how the importance weights (used for determining time-dependent ads) and keyword flags (used for determining immediate ads) are used; the Examiner's position is simply not supported.

With regard to the Examiner's argument that the Appellant is improperly reading limitations from the specification into the claims, the Appellant simply notes that the Examiner is improperly ignoring the "degree of" modifier in the phrase "degree of match" to simply interpret the phrase as a Boolean match. Although this claim interpretation is improper on its face, the Appellant referred to the specification since MPEP 2111 correctly states that during patent examination, the

pending claims must be given their broadest ***reasonable*** interpretation ***consistent with the specification*** and ***consistent with the interpretation that those skilled in the art would reach.*** The Appellant further notes that in Phillips v. AWH Corp., 75 U.S.P.Q.2d 1321 (Fed. Cir. July 12, 2005) (en banc), the Court of Appeals for the Federal Circuit ("the CAFC") stated:

> the specification "is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term."

Id., at 1327, quoting from Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed. Cir. 1996). Consequently, the Appellant respectfully disagrees with the Examiner's characterization of the Appellant's position on the standard for claim interpretation. In any event, to reiterate, even if the specification were not used at all, the Examiner improperly ignores the "degree of" modifier in the phrase "degree of match" to simply interpret the phrase as a Boolean match.

Regarding claim 8, the Examiner argues that the Radwin publication teaches the "overall scheme of a search term index which filters the ad type ***to be further matched*** in the ad repository based on the terms query." (Examiner's Answer, page 11) The Examiner further argues that "cutoff and ordering features are implicitly present as the highest ranked advertisements are displayed..." (Examiner's Answer, page 12) The Appellant notes that

these arguments ***ignore how and when the ranking cutoff takes place*** in claim 8.

Claim 8 recites:

> A system for automatically targeting Web-based advertisements, comprising:
> an indexer to identify advertisements relative to a query, wherein identified advertisements describe characteristics relative to at least one of a product and a service;
> a scorer to score the advertisements according to match between the query and the characteristics of the identified advertisements;
> a targeting component to provide at least some of the advertisements as Web-based content;
> a ranker to ***rank the identified advertisements using a selection criteria*** and ***ordering at least some of the ranked identified advertisements***; and
> a selector to ***select at least some of the ordered identified advertisements relative to a ranking cutoff***. [Emphasis added.]

As can be appreciated from the foregoing, the selector selects, using a ranking cutoff, advertisements that have ***already been ordered***.

The Examiner's arguments pertain to purported activities in the Radwin publication that occur ***before a match is determined***, or ***while an ordering takes place***. Such purported activities are not relevant to the selection made by the selector ***after*** matching and ordering have already occurred. Consequently, to reiterate, even if the Radwin publication teaches what

the Examiner purports, such purported teachings still do not meet the elements of claim 8.

Regarding claims 9-11 and 23-25, the Examiner argues that the Radwin publication teaches allowing weight values to be modified based on an updated advertising agreement(s), which affects a selection process as the ranking and cutoff are modified. (See Examiner's Answer, page 12.) As was the case above, the Examiner's argument ignores claim recitations. Specifically, claims 9 and 23 concern ***evaluating*** a "selection criteria" (***which was/were used to rank identified advertisements***).

The Examiner's argument relating to information purportedly used ***to evaluate ads*** does not address the fact that the claims concern information used ***to evaluate selection criteria*** (which was/were used to rank identified advertisements). Consequently, even if the Radwin publication teaches what the Examiner purports, such purported teachings still do not meet the elements of claims 9 and 23.

Regarding claims 12-14 and 26-28, the Examiner argues that the Appellant is improperly interpreting the claims. The Appellant disagrees. As detailed in the Appeal Brief, "ad creative" has a well-established and well-understood meaning in the art. The specification was referenced as showing the Appellant's usage of "ad creative" was consistent with this well-established meaning.

Regarding claims 19 and 22, the Examiner argues that the Radwin publication "shows an ads filtering scheme via

the search term index ***to be further matched*** in the ads repository (thus a sorting of the ads). [Emphasis added.]" Examiner's Answer, page 13. The Examiner again argues that cutoff and ordering features are implicitly present as the highest ranked advertisements are displayed. As was the case with claim 8 above, the Appellant notes that these arguments ***ignore how and when the selecting of at least some of the sorted identified advertisements, using a predefined threshold or a ranking cutoff, takes place*** in claims 19 and 22.

Based on the dependency of these claims and the use of antecedent basis, the selecting takes place on ads that have ***already been ordered or sorted***, and that have ***already been identified and scored***. The Examiner's arguments pertain to purported activities in the Radwin publication that occur ***before a match is determined***, or ***while an ordering takes place***. Such purported activities are not relevant to a selection made ***after*** identification, scoring and ordering or ranking have already occurred. Consequently, to reiterate, even if the Radwin publication teaches what the Examiner purports, such purported teachings still do not meet the elements of claims 9 and 22.

Finally, regarding the Examiner's response, the Examiner argues that disclosed examples of the state of the art do not constitute a teaching away from the broader disclosure, citing In re Susi, 169 U.S.P.Q. 423, 426 (CCPA 1971). However, the footnote referenced in In re Susi merely states that one is not "significantly 'taught away' from a 'particularly preferred embodiment' by the suggestion (whether true or false) that something

else may be even better." Id., at 426 n.2. However, as detailed in the Appeal Brief, the Radwin publication does not merely state that one technique (technique A) is better than another technique (technique B), but rather notes "significant drawbacks" of technique B (e.g., that users can intentionally provide inaccurate information about themselves). Thus, one skilled in the art would understand from the Radwin publication that a user's actions (e.g., in terms of past search queries) are more important and useful than information that a user might enter about themselves, and would therefore ***not be inclined to dilute or corrupt useful information with information with "significant drawbacks."***

Conclusion

In view of the foregoing, ***as well as the arguments presented in the earlier filed Appeal Brief (incorporated herein by reference)*** the Appellant respectfully submits that the pending claims are in condition for allowance. Accordingly, the Appellant requests that the Board reverse each of the outstanding grounds of rejection.

Any arguments made in this Appeal pertain ***only*** to the specific aspects of the invention ***claimed***. Any claim arguments, are made ***without prejudice to, or disclaimer of***, the appellant's right to seek patent protection of any unclaimed (e.g., narrower, broader, different) subject matter, such as by way of a continuation or divisional patent application for example.

Respectfully submitted,

December 18, 2007

John C. Pokotylo, Attorney
Reg. No. 36,242
Customer No. 26479
(732) 542-9070

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